

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
REPLY BRIEF**

75-7515 Original

To be Argued by
Jeffrey S. Karp

Docket No.
75-7515

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 75-7515

B

RS

RAUL GONZALEZ,

Plaintiff-Appellee,

-against-

ALBERT SHANKER, ANNE MERSELAU, LEONARD LURIE, ADOLPH ROHER, RICHARD LEE PRICE, JEROME GOODMAN, CAROLYN KOZLOWSKY, MARTIN RUBIN, KENNETH CAROSELLA, GARY SOUSA, HARRY LASER, ROGER BRAVERMAN, LORRAINE SPIVACK, IRVING ANKER, JOSEPH MONSERRAT, STEPHEN AIELLO, JOSEPH G. BARKAN, ROBERT CHRISTEN, AMELIA ASHE, JAMES F. REGAN, ISAIAH ROBINSON, THE UNITED FEDERATION OF TEACHERS, SOL LEVINE, GEORGE FESKO and MAX GREEN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

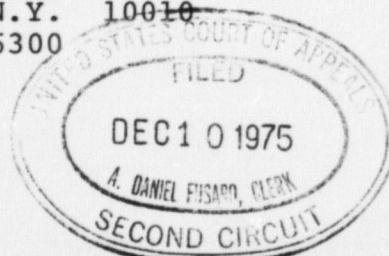
UFT APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT

The relevant and controlling legal authorities have been previously set forth in detail in the several memorandums of law filed herein and a further discussion of such legal pronouncements is unnecessary. Instead, the UFT defendants would take this opportunity to reply to some of the more glaring factual inaccuracies set forth in the brief of the appellee, Raul Gonzalez.

ARGUMENT

The appellee's brief at page 7 alleges that prior to the 1973 School Board elections, plaintiff (appellee) was approached by defendant officials and representatives of the UFT and asked to cooperate with them in the elections and in their plans for the district, citing paragraph 29 of the complaint (A. 14-15) as support for this charge.

In fact, nowhere in paragraph 29 of the complaint does Gonzalez allege that defendants Levine and Fesko, nor any other member of the UFT asked Gonzalez to "cooperate with them in the elections and their plans for the district." What Gonzalez has alleged in the complaint is that defendants Levine and Fesko told him "of the UFT's interest in using his school as a model of educational growth of a 'ghetto' school and in using plaintiff as a model of UFT leadership excellence." Gonzalez further alleged that he was told "that the UFT would publicize his efforts and increase his possibilities for future success if he accepted the UFT suggested arrangement" (A.15). These suggestions, if true, were perfectly

proper and, in fact, were admirable goals for both the UFT and Gonzalez to strive for. Instead, the appellee has completely distorted the nature of such suggestions and has compounded this distortion by misstating his own allegations in his brief.

It is vitally important to carefully read and discern this particular allegation in the complaint because such incident apparently serves as the origin of the alleged UFT conspiracy against the appellee under appellee's theory of the case.

The appellee's brief at page 17 alleges that Article X of the C.S.A. contract deals "exclusively with the interpretation and application of the C.S.A. contract", and then goes on to summarily dismiss the procedures contained therein as an administrative remedy for the resolution of appellee's complaints. Appellants submit, however, that Article X, Grievance Procedure, provides appellee with an effective, meaningful and speedy forum within which to resolve his complaints of administrative harassment and non-cooperation.

Article X defines the term grievance as:

"a. A complaint by a supervisor covered by this Agreement that there has been as to him a violation, a misinterpreta-

tion or inequitable application of any of the provisions of this Agreement or of the Memorandum of Understanding between the Board and CSA dated October 1, 1972." (105)

Article II - Fair Practices provides, in part:

"B. The Board agrees to continue its policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, marital status or membership or participation in, or association with the activities of, any employee organization." (53)

It is apparent from the foregoing that appellee's charges fall within the ambit of Article II, Section B of the contract, and that if the school officials have permitted a fire hazard to exist in appellee's school and have withheld a scheduled painting of appellee's school building, the grievance machinery, including arbitration, would be the fastest and most effective forum in which to deal with such problems.

Should appellee's grievance not be resolved at the level of the Chancellor, then under Article X, appellee may submit his grievance to arbitration (108-112). The voluntary labor arbitration rules of the American Arbitration Association would apply (109). The arbitrator, or appellee's attorney, would have the power to issue subpoenas and the arbitrator would have

the power to administer oaths. McKinney's, N.Y. CPLR §7505. The parties would be entitled to be represented by an attorney, to be heard, to present evidence and to cross-examine witnesses. CPLR §7506. In short, appellee would be guaranteed all of the attributes of procedural due process to which he may be entitled under these circumstances.

It is absurd to infer that the UFT defendants are not bound by the outcome of the contractual findings, or by the lawful directives of the school administrators as alleged at page 20 of appellee's brief. Defendants Carosella, Braverman and Spivack are all employees of the New York City Board of Education and Community School Board No. One and, in fact, are all employed in appellee's school. They, as well as the other union defendants, are bound by the directives and orders of the school officials in regard to the policies and day to day operations of the public schools.

Nor must appellee invoke the first step, second step and arbitration procedures of Articles X and XI of the agreement for each of the alleged acts of misconduct as stated at page 24 of appellee's brief. For as previously pointed out at page 4, supra, appellee

could grieve a general violation of Article II B of the agreement, and set forth each alleged incident as part of that contract provision violation, or as part of a violation of Article XI A, "special complaint" (112).

Appellee's attempts to join the individually named defendants, as well as the United Federation of Teachers, to a conspiracy against him, by the use of such legally deficient allegations as "the members of the Community School Board owe their positions to the UFT", are "identified with the UFT", are "out-spoken supporters of the UFT", "the UFT dominated Board", etc., will just not suffice in this most serious matter. Instead, the Court is referred to the Affidavit of defendant Kenneth Carosella, para. 4, wherein he states that no member of the Community School Board is either a teacher or a member of the UFT (132). Moreover, there is no reference in the record to support the claim made by appellee in the footnote at page 37 of appellee's brief.

Where, as here, serious allegations of racial discrimination have been lodged against the individual defendants, most of whom are either professional

educators, administrators, or labor leaders, this Court should scrupulously examine those allegations to determine in the first instance whether such individuals should be compelled to undergo the expensive and time consuming procedures inherent in a trial.

CONCLUSION

THE ORDER DENYING DEFENDANTS' MOTION TO
DISMISS SHOULD BE REVERSED AND THE COMPLAINT BE
DISMISSED.

Dated: December 9, 1975.

Respectfully submitted,

JAMES R. SANDNER
Attorney for UFT Appellants

JEFFREY S. KARP
Of Counsel.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No. 75-7515

RAUL GONZALEZ,
Plaintiff-Appellee,

against
ALBERT SHANKER, et al.,

Defendants-Appellants.

Plaintiff

Defendants

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF

NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
69 Country Club Lane, Pomona, New York 10970

That on December 9, 1975 deponent served the annexed
UFT Appellants' Reply Brief (2 copies)

on W. Bernard Richland, Corporation Counsel
attorney(s) for City defendants
in this action at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—~~post office~~—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me

December 10, 1975.

Michelle Flores

MICHELLE FLORES
NOTARY PUBLIC, State of New York
No. 31-4600003
Qualified in New York County
Commission Expires March 30, 1977

Ronna Zoberman
The name signed must be printed beneath
RONNA ZOBERMAN

Index No.

against

Plaintiff

Defendant

**ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL**

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is attorney(s) of record for

That on

19

deponent served the annexed

on
attorney(s) for
in this action at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated

The name signed must be printed beneath

Attorney at Law

